

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

SUZEE BRANCH,	:	Case No. 1:07-CV-26
Plaintiff,	:	
		: JUDGE KATHLEEN O'MALLEY
v.	:	
COMMISSIONER OF SOCIAL SECURITY,	:	<u>ORDER</u>
Defendant.	:	

Before this Court is Plaintiff Suzee Branch's request for attorneys fees under 20 C.F.R. §§416.1525 and 416.1528. (Doc. 26.) Branch's request was referred to Magistrate Judge Perelman ("Judge Perelman") for preparation of a Report and Recommendation ("R&R"). (Doc. 28.) On February 6, 2009, Judge Perelman filed his R&R, in which he recommended that this Court approve:

an award of attorney fees of \$4,800.00 from the plaintiff's award of past due benefits in the amount of \$34,925.00, with the proviso that a previous fee award pursuant to the Equal Access To Justice Act in the sum of \$2,000.00 will be returned to the plaintiff to avoid double recovery of fees.

(Doc. 29.) Judge Perelman's R&R explained that failure by the Commissioner to object to the R&R would result in the waiver of any right to object. (*Id.*)

The Commissioner has not filed any objection to this R&R and "[f]ailure to object to an adverse magistrate's report and recommendation, after being advised of the consequences, constitutes a waiver of further appellate review." *Smith v. Franklin*, 872 F.2d 1028 (6th Cir. 1989) (unpublished) (citing *Thomas v. Arn*, 474 U.S. 140 (1985)); see also *Javaherpour v. United States*, 315 Fed. Appx. 505, 508

(6th Cir. 2009) (“[A] party must file timely objections with the district court to avoid waiving appellate review.” (citing *States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981))). Indeed:

In *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 471, 88 L. Ed. 2d 435 (1985), the United States Supreme Court specifically upheld [the Sixth Circuit’s] rule conditioning the right to appeal a district court’s order on the filing of specific objections to the magistrate’s report and recommendation. The Court noted that “the Sixth Circuit rule, by precluding appellate review of any issue not contained in objections, prevents a litigant from ‘sandbagging’ the district judge by failing to object and then appealing.” *Id.*

Wilson v. McMacken, 786 F.2d 216, 220 (6th Cir. 1986).

Because the Commissioner has not objected to any portion of Judge Perelman’s R&R recommending an award of fees, it is unnecessary to review this motion further. Branch’s motion is, accordingly, **GRANTED**.

IT IS SO ORDERED.

s/Kathleen M. O’Malley
KATHLEEN McDONALD O’MALLEY
UNITED STATES DISTRICT JUDGE

Dated: December 8, 2009